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Supreme Court of the United States

October Term, 1974
No. 74-1025

BURTICE A. HINES, *et al.*,
Petitioners,

vs.

ANCHOR MOTOR FREIGHT, INC., *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

NIKI Z. SCHWARTZ
GOLD, ROTATORI, MESSERMAN
& HANNA
1100 Investment Plaza
Cleveland, Ohio 44114
Counsel for Petitioners

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

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Supreme Court of the United States

October Term, 1974

No. .....

BURTICE A. HINES, VINCENT MARIANO, LINDSAY E. WORLEY, GRAYDON H. CROFT, JR., NOBLE W. PARTCH, EUGENE ALBAN, ARTHUR D. CARTWRIGHT, AND DWAIN O. CRAWFORD,

Petitioners,

vs.

ANCHOR MOTOR FREIGHT, INC., INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AND TEAMSTERS LOCAL UNION NO. 377,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit affirming summary judgments granted by the District Court to respondents Anchor Motor Freight, Inc. and International Brotherhood of Teamsters in this case.

OPINIONS BELOW

The opinion of the Court of Appeals has not yet been reported, but is printed in the Appendix attached hereto, *infra*, p. A9. The opinion of the District Court is unofficially reported as *Hines v. Local Union No. 377, et al.*, 72 LC ¶13,987 (N.D. Ohio 1973) and is printed in the Appendix, *infra*, p. A1.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on November 22, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether petitioners' claim under LMRA §301 for wrongful discharge is barred by the decision of a joint grievance committee upholding their discharge, notwithstanding that their union breached its duty of fair representation in processing their grievance so as to deprive them and the grievance committee of overwhelming evidence of their innocence of the alleged dishonesty for which they were discharged?

2. Whether an International Union may immunize itself from liability for breaches of the duty of fair representation committed by its locals by proclaiming their autonomy while, at the same time, retaining absolute control over their conduct, their property and their very existence?

STATUTORY PROVISION INVOLVED

Labor-Management Relations Act §301 (29 U.S.C. §185):

> *Suits by and against labor organizations—Venue, amount and citizenship*
>
> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.
>
> *Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments*
>
> (b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter, and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Jurisdiction

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Service of process

(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

Determination of question of agency

(e) For the purposes of this section, in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling. June 23, 1947, c. 120, Title III, §301 61 Stat. 156.

STATEMENT OF THE CASE

Petitioners, eight truck drivers discharged from their jobs by the respondent Anchor Motor Freight Company, seek to have this Court review a divided decision of the Court of Appeals for the Sixth Circuit entered on November 22, 1974, affirming summary judgments granted by the District Court in favor of respondents Anchor Motor

Freight and the International Brotherhood of Teamsters in petitioners' action for wrongful discharge and breach of the duty of fair representation. (The Court of Appeals reversed the District Court's grant of summary judgment to Teamsters Local Union No. 377.)

The relevant facts are set forth below as they pertain to wrongful discharge, unfair representation and the proceedings below respectively.

A. Wrongful Discharge

On June 5, 1967, the eight petitioners and three others were discharged from their employment as truck drivers for Anchor Motor Freight for alleged dishonesty (R. 312-314).[1] Petitioners contend that by this discharge, Anchor Motor Freight breached its collective bargaining agreement with petitioners' union, Local 377 of the International Brotherhood of Teamsters, by which Anchor agreed that:

> "The Employer shall not discharge or suspend any employees without just cause. . . ." (Art. 32, National Master Automobile Transporters Agreement, R. 418-419).

The alleged dishonesty consisted of claims that petitioners had submitted motel receipts to the Company for reimbursement for higher amounts than they had actually paid (R. 315). The evidence upon which Anchor relied (R. 317-319, 328-329) which it submitted to subsequent grievance proceedings (R. 348) and to the District Court consisted of receipts showing amounts paid in excess of amounts shown paid on the comparable motel registration cards (R. 420-426), accompanying logs and expense sum-

1. "R" refers to the page number of items reprinted in the Appendix filed in the Court of Appeals. The opinions below which are reprinted in the Appendix to this Petition will be cited as "A".

maries, the notarized statement of motel clerk Anthony Pagano swearing to the accuracy of the amounts shown on the registration cards (R. 427-433) and the notarized statements of motel owner Joseph Repicci swearing to the accuracy of the amounts shown on the registration cards and to the fact that inflated receipts were given to petitioners (R. 434-436).

Petitioners' evidence in the District Court on this issue consisted of (1) the fact that they have at all times denied paying less than was shown on the receipts they submitted (R. 279-280, 236-237, 211, 122); (2) owner Repicci's deposition testimony that he personally handled none of the transactions in question (R. 185), that his brother-in-law Pagano had handled them, having authority to sign his name (R. 184-185), that he (Repicci) had no personal knowledge of the transactions (R. 186) and that his notarized statements (R. 434-436) had been based solely on comparison of the receipts with the registration cards and his brother-in-law's word (R. 187-188); and (3) *Clerk Pagano's Deposition Testimony that he handled all of the transactions in question (R. 133-136), that the amounts shown on the receipts accurately reflect what petitioners paid and that the discrepancy between the receipts and the registration cards is attributable to his having recorded a lesser amount on the registration card and pocketed the difference (R. 137-139), that he committed perjury when he swore to the notarized statement obtained by Anchor (R. 142), and that, of his own volition, he apprised Anchor officials of these facts in 1968 (R. 143-149).*

Thus, there is no evidence of petitioners' dishonesty that survives Pagano's admission of culpability, and the evidence overwhelmingly establishes petitioners' innocence, and, therefore, their discharge is "without just cause" in violation of the collective bargaining agreement.

B. Unfair Representation

1. *Local 377 processed petitioners' grievance in an "arbitrary" and "perfunctory" fashion.*

On the day petitioners were discharged, June 5, 1967, grievance proceedings were had at the local level, at which Anchor's evidence of petitioners' alleged dishonesty (R. 420-436) was presented to Local 377 Business Agent, Abe Schwartz[2] (R. 317-318, 275). The informal meeting between company and union officials culminated in an agreement that the men would be reinstated pending submission of the dispute to the Joint Arbitration Committee in Detroit (R. 338) which proceedings were subsequently scheduled for July 26, 1967 (R. 437).

In the interim, petitioners advised their union representatives, Angelo and Schwartz, of their innocence (R. 239, 271), solicited their assistance and advice in preparing for the hearing in Detroit (R. 118, 105-106, 205-206, 219-220), and specifically suggested investigating the motel, contacting the motel owner, and obtaining or consulting a lawyer (R. 105-106, 127-128, 205-206). *Notwithstanding the substantial evidence presented by the Company at the local meeting, Angelo and Schwartz advised petitioners that they had nothing to worry about (R. 118, 219-220), that there was no way the Company could fire them and that there was no need for them to investigate or do anything (R. 106, 206). Plaintiffs were specifically advised to forget it (R. 127), to do nothing (R. 127),* and *to let Angelo take care of it (R. 118, 219).*

Petitioners heeded Angelo and Schwartz as "advice of knowing what was going on" (R. 106, 220). Prior

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2. One of two business agents assigned by Local Union 377 to "service" the employees at Anchor's Lordstown terminal. The other was John Angelo (R. 269).

to going to Detroit for the hearing, Angelo and Schwartz conducted no investigation, gathered no evidence, gave petitioners no advice of their procedural rights and engaged in no preparation other than telling the men to be there and state their case (R. 102, 127, 239-240, 276, 280-282).

At the hearing in Detroit, Angelo and Schwartz presented not a shred of evidence (R. 76, 122, 350-352), responding to the Company's evidence (R. 420-436) with nothing more than raw assertion of the petitioners' innocence and wholly unsupported charges against the motel (R. 344-345, 351). Each of the petitioners present was given the opportunity to assert his innocence as well (R. 346-347).

After the panel upheld the discharge,[3] petitioners privately retained an attorney (R. 125, 224) who went to the motel and obtained a sworn statement from owner Repicci (R. 224) indicating that he had no personal knowledge of the transactions in question, that his clerk had handled them, and that the discrepancy between the receipts and registration cards could just as likely be attributable to the clerk recording less than was actually paid (R. 442-61).

Armed with this statement, some of the petitioners returned to Detroit in October (accompanied by their attorney, Angelo, and Schwartz) to seek a rehearing from the panel based on the new evidence (R. 125). However, the requests for rehearing were unanimously denied on the ground that there was no new evidence justifying a reopening (R. 462-64) and the motel owner's statement was never considered by the grievance committee on the merits of the discharge.

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3. An unsurprising result in light of the evidence presented. Even union representatives on the panel voted against petitioners (R. 357-358).

2. *Local 377 Officials were motivated by ill will and animosity toward petitioners generated by labor relations conflicts occurring prior to the discharge.*

When Anchor Motor Freight opened its Lordstown Terminal in 1966, the Company was compelled by contract to rehire laid-off drivers from Norwood, Ohio, who came to Lordstown with seniority and entitlement to higher fringe benefits (R. 288-291). The Norwood drivers were unhappy with the less favorable dispatch system and work rules at Lordstown (R. 212-213, 300-301), pursuant to a local rider negotiated by Anchor with Teamsters Local 964 prior to the arrival of any employees and only a week or two before Local 377 assumed jurisdiction as collective bargaining agent (R. 292-296, 298). Complaints about the local rider and about the lack of opportunity to vote on its ratification produced only claims of being helplessly bound by it from Local 377 (R. 231-233).

Further, the drivers complained about a general failure of representation from Local 377 (R. 128-129), including the failure to provide a steward and committee from the opening of the terminal in April 1966 to a stormy union meeting in August of that year when John Angelo appointed a steward over the vehement objections of the men, who had elected their own at Norwood and wanted to do so at Lordstown (R. 85-87, 89). Only under threat of walkout did Angelo permit the men to elect a committee (R. 217-218). During the course of the meeting, Angelo denounced the Norwood drivers as "hillbillies" and declared that they weren't going to take over his union (R. 386-387).

The drivers' discontent with the local rider working conditions and with the representation provided by Local 377 continued into February 1967, when they took matters

into their own hands and went out on a wildcat strike (R. 88, 92, 129). Among the leaders of the wildcat strike were petitioners Worley and Croft (R. 408-413).

During this period of driver discontent with working conditions at Lordstown and even greater unhappiness with the quality and vigor of representation being provided by Angelo and Schwartz, the two business agents for Local 377 were receiving favors from the Company. Terminal Manager Eugene Babiasz loaned a Company car to John Angelo (R. 248-256) and arranged a personal automobile purchase bargain for him in Michigan (R. 257-259). Jobs were given to at least two of Abe Schwartz' relatives (R. 391-392). Meanwhile the Company was weeding out its Norwood drivers, twenty-five of the fifty-seven who had transferred to Lordstown having been terminated or quit by the end of 1967, including five of the eleven discharged for the alleged dishonesty in issue in the instant case (R. 414-417).[4]

C. Proceedings Below

This action by eight of the eleven discharged drivers was filed on June 30, 1969 in the Northern District of Ohio, Eastern Division (R. 4). On September 25, 1973, under dubious procedural circumstances,[5] the District

4. The Company had previously, but unsuccessfully, sought to discharge petitioner Worley (R. 123-124).

5. On June 1, 1972, Anchor Motor Freight filed a motion for summary judgment (R. 25) based on the identical evidence and law subsequently asserted in support of its second and successful motion filed a year later. (Both union respondents expressly opted not to file summary judgment motions within the deadlines established and extended (R. 20-24) by the District Court (R. 58-59)). On October 31, 1972 district Judge Leroy Contie overruled Anchor's first motion for summary judgment finding "substantial issues as to material facts" (R. 28).

(Continued on following page)

Court granted summary judgment to all respondents on the ground that the decision of the joint grievance committee upholding the discharges was final and binding absent a breach of the duty of fair representation by the union, of which there was insufficient evidence to warrant a trial (A1-8).

On appeal to the Sixth Circuit, the Court of Appeals unanimously reversed the judgment in favor of Local Union No. 377, concluding that there was indeed sufficient evidence of a breach of the duty of fair representation to warrant a trial, but nevertheless affirmed by divided vote the summary judgment in favor of Anchor Motor Freight, holding that the joint grievance committee's decision was final and binding in favor of the employer notwithstanding that the union breached its duty of fair representation in processing the grievance (A15-16). The Court affirmed the judgment in favor of the International Union, implicitly holding that the International could not

Footnote Continued—

Although Anchor's subsequent motion for continuance until after January 1, 1974 was overruled (R. 30-37), the case was never called for trial, notwithstanding that it was set for trial six times between September 11, 1972 and September 24, 1973 (R. 26, 27, 29, 37, 38, 39).

One year after its first motion, Anchor filed another motion for summary judgment (R. 40) based on the identical evidence and legal theories which it had urged in support of its previous motion (R. 25) which had been overruled by the Court (R. 28). This time the union respondents filed a motion for summary judgment as well (R. 42) based, however, on the same evidence and legal contentions (plus a contention by the respondent International Brotherhood of Teamsters that even assuming a wrongful discharge, and breach of the duty of fair representation by Local 377, the International was not liable therefor). Judge Contie, brushing aside petitioners' objections to the refiling of the identical motion previously overruled (R. 44-48) and to the filing by the union respondents an entire year out of rule (R. 49-59), reversed himself and granted summary judgment to all respondents (A1-8).

be vicariously liable for the torts of its Local (A15), an issue which the District Court had found it unnecessary to resolve.

Petitioners now petition this Court to review the Court of Appeals' judgments of affirmance in favor of the respondent Anchor Motor Freight and International Brotherhood of Teamsters.

REASONS FOR GRANTING THE WRIT

I. The Decision of the Sixth Circuit Below Is in Conflict with the Decisions of the Courts of Appeals of Other Circuits.

The majority below affirmed the summary judgment in favor of the respondent Anchor Motor Freight on petitioners' claim for wrongful discharge, on the ground that the decision of a joint grievance committee upholding the discharge barred their §301 action. It did so in spite of its finding that there was sufficient evidence, to warrant a trial, that respondent Local Union No. 377 had breached its duty of fair representation to petitioners in handling their grievance.

The resultant holding, that a joint grievance committee proceeding in which petitioners were not fairly represented bars their §301 action against the employer, is in direct conflict with the holdings of the other circuit courts of appeals which have decided this issue. See *Margetta v. Pam Pam Corp.*, 501 F.2d 179 (9th Cir. 1974); *Local 13, International Longshoremen's and Warehousemen's Union v. Pacific Maritime Association*, 441 F.2d 1061 (9th Cir. 1971); *Steinman v. Spector Freight System, Inc.*, 441 F.2d 599 (2d Cir. 1971).[6]

The *Margetta* case is virtually identical to the instant case in all material respects. After plaintiff Margetta's discharge had been finally upheld in arbitration,[7] she filed a complaint under §301 charging her employer with wrongful discharge in breach of the collective bargaining agreement and her union with breach of the duty of fair representation in the handling of her grievance. The district court dismissed her wrongful discharge claim against her employer on the ground that said claim was barred by the arbitration award even though her union may have breached its duty of fair representation in the arbitration proceeding. *Margetta v. Pam Pam Corp.*, 354 F. Supp. 158 (N.D. Cal. 1973). On appeal, the Ninth Circuit reversed the district court and reinstated Margetta's claim against her employer, declaring at 501 F.2d 180:

> "We have said that an employee may not attack a final arbitration decision, '. . . except on the grounds of fraud, deceit *or breach of the duty of fair repre-*

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6. In addition to the specific holdings of the Second and Ninth Circuits, three other circuits have indicated their view, by way of dicta, that a grievance proceeding in which an employee is not provided with fair representation does not bar his §301 action against his employer. See *Harris v. Chemical Leaman Tank Lines, Inc.*, 437 F.2d 167, 171 (5th Cir. 1971); *Lusk v. Eastern Products Corp.*, 427 F.2d 705, 708 (4th Cir. 1970); *Bieski v. Eastern Automobile Forwarding Co.*, 396 F.2d 32, 38 (3d Cir. 1968).

7. The decision of a joint grievance committee in the instant case is certainly entitled to no greater finality than the award of an impartial arbitration as in *Margetta*, and most commentators believe it should be entitled to much less. See, e.g., Feller, *A General Theory of the Collective Bargaining Agreement*, 61 CALIF.L.REV. 663, 837-38 (1973):

> "Decisions by joint committees are therefore appropriately treated, as Mr. Justice Goldberg reasoned in *Humphrey* [*v. Moore*, 375 U.S. 335 (1964)], as agreements of the parties, not arbitration awards."

sentation or unless the grievance procedure was a "sham, substantially inadequate or substantially unavailable"'. *Andrus vs. Convoy Co.*, 480 F.2d 604, 606 (C A 9 1973), quoting from *Harris vs. Chemical Leaman Tank Lines, Inc.*, 437 F.2d 167, 171 (C A 5 1971). Without doubt, the circumstances outlined in appellant's complaint fall within these narrowly drawn exceptions. Consequently, the district court had jurisdiction to review the merits of the wrongful discharge claim. *Steinman vs. Spector Freight System, Inc.*, 441 F.2d 599, 603 (C A 2 1971)."

In the *Steinman* case, the district court had granted the employer's motion for summary judgment in the plaintiff's §301 action for wrongful discharge on the ground that plaintiff was bound by the final decision of a joint grievance committee notwithstanding a finding by the N.L.R.B. that Steinman had not been fairly represented in the grievance proceeding. The Second Circuit reversed, holding that the district court erred in not allowing plaintiff's §301 suit to proceed and remanded the case for that purpose,[8] stating:

> "We do not agree with [the district court's] analysis, since it places undue emphasis on the form of arbitration and ignores the realities of plaintiff's plight. He has been effectively denied a fair hearing on the merits of his claim in the arbitration process and has now been similarly denied one in the federal district

8. The fact that on remand the district court held that the employer (not having been a party to the NLRB proceeding) was not bound by the NLRB finding of unfair representation and concluded (after de novo trial of the issue) that Steinman had been fairly represented, *Steinman v. Spector Freight System, Inc.*, Civil No. 1968-341 (W.D. N.Y. Feb. 16, 1972), *aff'd* 476 F.2d 437 (2d Cir. 1973), in no way detracts from the holding of the Second Circuit at 441 F.2d 599 that a meritorious claim of unfair representation by the union entitles the plaintiff to litigate his wrongful discharge claim in a §301 action against his employer.

> court. We agree that under *Republic Steel* [*Corp. vs. Maddox*, 379 U.S. 650 (1965)]—as well as under other decisions cited to us by Spector—plaintiff could not sue if he had lost in a fair arbitration. But that has not occurred and the case is therefore inapposite." 441 F.2d at 603.

Similarly in *Local 13, International Longshoremen's and Warehousemen's Union v. Pacific Maritime Association*, 441 F.2d 1061 (9th Cir. 1971) the Ninth Circuit reversed a summary judgment in favor of the defendant employers association, expressly adopting the doctrine

> "that although grievance procedures were exclusive and the arbitrator's award final, an employee may sue for breach of contract under section 301(a) if his union violated its duty to represent him fairly." *Id.*, at 1066.

Confronted with the foregoing direct holdings of the Second and Ninth Circuits (as well as consistent dicta from the Third, Fourth and Fifth Circuits)[9], the Sixth Circuit below failed or refused to even acknowledge their existence, much less attempt to explain why they were either distinguishable or unworthy of being followed. The Sixth Circuit chose simply to ignore all conflicting authority.

This kind of unreasoned, unexplained conflict among the circuits[10] causes uncertainty and loss of confidence

9. See cases cited in footnote 6, *supra*.

10. The conflict among the circuits is mirrored in the district courts. E.g., compare *Holodnak v. Avco-Lycoming Division Avco Corp.*, 381 F. Supp. 191, 199 (D. Conn. 1974) and *Chapman v. United Aircraft Corp.*, 329 F. Supp. 735 (E.D. Pa. 1971) with *Allesandrini v. American Fed'n of Musicians*, 334 F. Supp. 1152 (S.D. N.Y. 1970) and *Hill v. Aro Corp.*, 275 F. Supp. 482 (N.D. Ohio 1967). See also *Berry v. Pacific Intermountain Express Co.*, ____ F. Supp. ____, 73 LC ¶14,274 (D. N.M. 1974).

in the law and generates much unnecessary litigation. It is precisely this problem that this Court's certiorari jurisdiction was designed to remedy.

II. The Decision of the Sixth Circuit Below Is in Conflict with the Spirit of This Court's Decisions in Vaca v. Sipes, 386 U.S. 171 (1967) and Humphrey v. Moore, 375 U.S. 335 (1964).

In arriving at its decision in *Vaca v. Sipes*, 386 U.S. 171 (1967) that fair representation duty suits were not pre-empted by the jurisdiction of the National Labor Relations Board, this Court found it necessary to consider the issue "in the context of many [anticipated] §301 breach-of-contract actions." 386 U.S. at 187. The Court, recognizing that because contractual grievance procedures "have been devised and are often controlled by the union and the employer, they may well prove unsatisfactory or unworkable for the individual grievant," found it necessary "to determine under what circumstances the individual employee may obtain judicial review of his breach-of-contract claim despite his failure to secure relief through the contractual remedial procedures." 386 U.S. at 185.

The Court concluded that it would be a great injustice to leave an employee remediless where "the employer has committed a wrongful discharge in breach of [the collective bargaining] agreement, a breach which could be remedied through the grievance process to the employee-plaintiff's benefit were it not for the union's breach of its statutory duty of fair representation to the employee." 386 U.S. at 185-186. Mr. Justice White, speaking for the majority, explained:

> "We cannot believe that Congress, in conferring upon employers and unions the power to establish exclusive grievance procedures, intended to confer upon unions such unlimited discretion to deprive injured employees of all remedies for breach of contract. Nor do we think that Congress intended to shield employers from the natural consequences of their breaches of bargaining agreements by wrongful union conduct in the enforcement of such agreements. Cf. *Richardson v. Texas & N.O. R. Co.*, 242 F.2d 230, 235-236 (C.A. 5th Cir.).
>
> "For these reasons, we think the wrongfully discharged employee may bring an action against his employer in the face of a defense based upon the failure to exhaust contractual remedies, provided the employee can prove that the union as bargaining agent breached its duty of fair representation in its handling of the employee's grievance." 386 U.S. at 186.

Although it is true that the particular facts of *Vaca v. Sipes*, involved the refusal of the union to process the plaintiff's grievance to conclusion, both the letter and the logic of the Court's opinion apply equally to breaches of the duty of fair representation committed by the union in the course of processing the grievance. Thus, in brief explanation of the duty of fair representation as applied to grievances, the Court said:

> ". . . that a union may not arbitrarily ignore a meritorious grievance *or process it in perfunctory fashion.* . . ." (Emphasis added) *Id.*, at 191.

Indeed, any other rule would facilitate the easy evasion of the *Vaca* principle by the simple device of perfunctorily processing the grievance, thereby according the employee the form, but not the substance, of grievance proceedings.[11] Accordingly, each circuit court of appeals

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11. This is exactly what petitioners claim happened in the instant case. See Section IV *infra* at p. 28.

that has considered the issue[12] (except for the Sixth Circuit in the instant case) has concluded that the clear import of *Vaca v. Sipes* is that a grievance proceeding in which an employee has been deprived of fair representation cannot bar his §301 action against his employer. Typical of the other circuit courts' interpretation of *Vaca* is that in *Margetta v. Pam Pam Corp.*, 501 F.2d 179 (9th Cir. 1974):

> "Although *Vaca vs. Sipes*, 386 U.S. 171 (1967), involved a state court action against the union alone, rather than a §301 action against the union and the employer, and even though the arbitration there involved was not prosecuted to a final award, nonetheless, Justice White's in-depth discussion of an employee's rights, in circumstances such as these, must be given persuasive consideration. To us, it makes little difference whether the union subverts the arbitration by refusing to proceed as in *Vaca* or follows the arbitration trail to the end, but in so doing subverts the arbitration process by failing to fairly represent the employee. In neither case, does the employee receive fair representation. The grievance procedure is nothing less than a 'sham'.
>
> * * * * *
>
> "The fundamental teaching of *Vaca* is that somewhere along the judicial trail, the employee is entitled to a fair hearing on her grievance and, if wrongfully

12. *Holdings*: *Margetta v. Pam Pam Corporation*, 501 F.2d 179 (9th Cir. 1974); *Local 13, International Longshoremen's and Warehousemen's Union v. Pacific Maritime Association*. 441 F.2d 1061 (9th Cir. 1971); *Steinman v. Spector Freight System, Inc.*, 441 F.2d 599 (2d Cir. 1971); *Dicta*: *Harris v. Chemical Leaman Tank Lines, Inc.*, 437 F.2d 167, 171 (5th Cir. 1971); *Lusk v. Eastern Products Corp.*, 427 F.2d 705, 708 (4th Cir. 1970); *Bieski v. Eastern Products Automobile Forwarding Co.*, 396 F.2d 32, 38 (3d Cir. 1968).

> discharged, a judgment for adequate compensation or other relief. To suggest that she may sue her union is no answer. Relief against the union would not restore her job with Pam Pam. As indicated in *Vaca*, in these circumstances, adequate relief may be obtained only by joining the union and the employer." 501 F.2d at 180-81.

The rationale for applying the reasoning of *Vaca* to grievances processed to conclusion without fair representation was most recently and succinctly restated in *Holodnak v. Avco-Lycoming Division, Avco Corp.*, 381 F. Supp. 191, 199 (D. Conn. 1974):

> "The reason is that the employee's grievance can hardly have been given due consideration by the arbitrator when it was not fairly presented by his representative union."

The applicability of the principles underlying *Vaca* to grievances processed to conclusion had been recognized by this Court three years earlier in *Humphrey v. Moore*, 375 U.S. 335 (1964). This Court decided in *Humphrey* that proof of the plaintiff-employees' claim of dishonest union conduct in breach of the duty of fair representation would permit them to maintain a §301 action for breach of the collective bargaining agreement against their employer to enjoin enforcement of an otherwise final decision of a joint grievance committee on a seniority grievance.[13]

The decision of the Sixth Circuit in the instant case is most starkly revealed to affront the principles underlying *Vaca* and *Humphrey* when it is considered in light of

13. This was not, however, the technical "holding" of *Humphrey v. Moore* as the Court went on to conclude that the plaintiffs had failed to prove a breach of the duty of fair representation on the part of their union, and therefore reversed the judgment for the plaintiffs entered by the state court.

this Court's subsequent decision in *Czosek v. O'Mara*, 397 U.S. 25 (1970) holding that "damages against the union for loss of employment are unrecoverable except to the extent that its refusal to handle the grievances added to the difficulty and expense of collecting from the employer." 397 U.S. at 29. The implications of *Czosek* for the instant case (if the judgment of the Sixth Circuit is allowed to stand) is that petitioners are utterly without remedy even though they were wrongfully discharged (being wholly innocent of the dishonesty with which they were charged) and even though they were deprived of the opportunity to prove their innocence by reason of their union's arbitrary and/or bad faith processing of their grievance in breach of the duty of fair representation. Obviously, petitioners can be awarded neither reinstatement nor damages for loss of employment against their employer, respondent Anchor Motor Freight, if the summary judgment in favor of Anchor is permitted to stand, while *Czosek* precludes the recovery of damages from their union except to the extent that it "added to the difficulty and expense of collecting from the employer," which damages are arguably nothing since nothing will have been collected from the employer. Thus, petitioners will have suffered two wrongs without a remedy.

None of the implications of *Vaca v. Sipes* or *Humphrey v. Moore* for the instant case were considered by the Sixth Circuit below in arriving at its judgment affirming the summary judgment awarded to respondent Anchor Motor Freight. The Sixth Circuit simply cited without analysis this Court's *"Steelworkers Trilogy"*[14] and its own pre-

14. *United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior and Gulf Navigation Company*, 363 U.S. 574 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

Vaca decision in *Balowski v. International Union, United A., A. & A. Imp. Workers*, 372 F.2d 829 (6th Cir. 1967) as dispositive (A16).

It is hard to believe that either Congress or this Court ever intended that wrongfully discharged, unfairly represented employees such as petitioners should be left remediless. If, however, in the interest of some higher principle of national labor policy, that is to be the case, it is essential that it be so on the basis of a reasoned evaluation of the competing policy interests by this Court and not merely upon the unexplained fiat of the Sixth Circuit.

III. This Case Presents Important Issues of National Labor Policy Requiring Resolution by This Court.

A. The issues of this case have been the subject of widespread litigation in the lower courts without substantial guidance from this Court since Vaca v. Sipes, 386 U.S. 171 (1967).

That the issues presented by this case are of widespread nationwide concern is demonstrated by substantial litigation involving the identical issues in at least five other Circuits,[15] in the context of literally hundreds of fair representation cases litigated in the wake of *Vaca v. Sipes*,[16] as well as by the voluminous discussion of these issues in the post-*Vaca* law review literature.[17] All

15. See cases cited in footnotes 12 and 10 *supra*.

16. Feller, *A General Theory of the Collective Bargaining Agreement*, 61 CALIF. L. REV. 663, 855 (1973); 2 ABA LABOR RELATIONS LAW SECTION 105 (1973); SHEPARD'S UNITED STATES CITATIONS 738 (1943-1971 case ed.).

17. See, e.g., Azoff, *Joint Committees as an Alternative Form of Arbitration Under the NLRA*, 47 TUL. L. REV. 325, 345-355 (1973); Clark, *The Duty of Fair Representation: A Theoretical Structure*, 51 TEX. L. REV. 1119, 1167-1173 (1973); Feller *A General Theory of the Collective Bargaining Agreement*, 61

(Continued on following page)

of this litigation has proceeded without substantial guidance from this Court since *Vaca*,[18] with concomitant uncertainty in the law and conflict of decision. The compelling need for this Court to exercise its certiorari jurisdiction in a case such as this to resolve these conflicts has been cogently articulated by one recent commentator:

Footnote Continued—

CALIF. L. REV. 663, 836-838 (1973); Flynn & Higgins, *Fair Representation: A Survey of the Contemporary Framework and a Proposed Change in the Duty Owed to the Employee*, 8 SUFFOLK U. L. REV. 1096, 1118-1120 (1974); Lewis, *Fair Representation in Grievance Administration: Vaca v. Sipes*, 1967 SUP. CT. REV. 81, 122-126; Tobias, *A Plea for the Wrongfully Discharged Employee Abandoned by his Union*, 41 U. CIN. L. REV. 55, 89-91 (1972).

18. Only eight decisions of this Court have even cited *Vaca v. Sipes* since it was decided in 1967, and none of them resolve any of the issues discussed but left unresolved in *Vaca*: *Mangus v. A.C.E. Freight, Inc.*, 386 U.S. 482 (1967) (vacated and remanded for further consideration in light of *Vaca*); *NLRB v. Allis Chalmers Mfg. Co.*, 388 U.S. 175, 181 (1967) (held not an unfair labor practice for union to discipline members declining to honor authorized strikes); *Glover v. St. Louis-San Francisco Ry. Co.*, 393 U.S. 324, 329 (1969) (futility of contractual grievance procedures held to excuse failure to exhaust claim of racial discrimination); *Czosek v. O'Mara*, 397 U.S. 25, 26 (1970) (held complaint alleging breach of fair representation by union may be maintained independently of claim against employer required by court of appeals to be submitted to Railway Adjustment Board); *U. S. Bulk Carriers v. Arguelles*, 400 U.S. 351, 352 (1971) (seaman held entitled to sue for wages in admiralty without exhausting contractual grievance procedures due to special status of seamen as "wards of admiralty"); *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 299 (1971) (state court action against union for procuring plaintiff's discharge from employment pursuant to a valid union security clause held preempted by NLRA where no "arbitrary or bad faith conduct" in breach of the duty of fair representation was claimed or proven in the proceedings below); *Ricci v. Chicago Mercantile Exchange*, 409 U.S. 289, 311 (1973) (anti-trust action held properly stayed to permit administrative consideration by Commodity Exchange Commission; *Vaca* cited in dissent arguing the inability to compel the Commission to consider the matter as analogous to submitting claim of unfair labor practice to NLRB); *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 58 n. 19 (1974) (Title VII action for racially discriminatory discharge held not foreclosed by prior submission to, and adverse decision by, contractual arbitration proceedings).

"Litigants need clear, meaningful principles as badly as the courts. Unions need to know their rights; with better understanding they could use *internal* political processes more and the courts less. Employers also have an interest in clearer legal standards. They are frequently drawn into triangular suits in which their liability for contract breach depends on the union's fair representation violation. More of these costly suits could be settled if the law were better defined."[19]

B. Review of this case is essential to the integrity of industrial grievance procedures and to the preservation of those procedures as "substitute[s] for industrial strife."

Another compelling reason for this Court to grant certiorari in this case is to protect and preserve the fundamental principle of this Court's decisions in the "Steelworkers Trilogy"[20] of reliance upon contractual grievance procedures as the primary means of resolving industrial disputes. In order for contractual grievance procedures to serve their appointed function as "substitute[s] for industrial strife,"[21] it is necessary to insure not only their integrity but also the appearance of their integrity[22] so that their results will be accepted by the losing as well as the winning participants.[23] The breach of contract-

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19. Clark, *The Duty of Fair Representation: A Theoretical Structure*, 51 TEX. L. REV. 1119, 1121-22 (1973).

20. See cases cited in footnote 14 *supra*.

21. 363 U.S. at 578

22. Cf. *Offutt v. United States*, 348 U.S. 11, 14 (1954).

23. "The smooth functioning of the grievance machinery can lead to employee faith in the proper handling of industrial disputes. When the grievance machinery breaks down either

(Continued on following page)

duty of fair representation law suit represents the only significant check against breaches of integrity of contractual grievance procedures detrimental to individual employees "stripped of traditional forms of redress by the provisions of federal labor law."[24] This checking-safety valve[25] function of §301-fair representation actions is essential to the preservation of contractual grievance machinery as "the very heart of the system of industrial self-government."[26] It is particularly important that this Court give plenary consideration to this role of §301-fair representation litigation at this time due to the rising tide of informed questioning of the integrity of industrial grievance procedures[27] (with particular skepticism directed toward the kind of joint grievance committee sys-

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Footnote Continued—

because of employer repudiation of the grievance process or because a union wrongfully refuses to press an employee's grievance, faith in the system diminishes, and employees, unsatisfied with internal solutions to disputes, seek external action. Usually, the two external remedies used are wildcat strikes and court action under the doctrine of the duty of fair representation. The latter is clearly the preferred alternative." Flynn & Higgins, *supra* footnote 17, at 1098-1099.

24. *Vaca v. Sipes, supra* at 182.

25. "Employees who seek legal remedies must have faith in the manner in which the court arrives at its conclusion; otherwise, employees will refuse to seek court action and will resolve their disputes through industrial disturbances. The doctrine of the duty of fair representation can provide aggrieved employees with the opportunity to adjudicate their disputes in a neutral forum. The success of this doctrine in helping to eliminate industrial work stoppages depends upon whether courts are willing to assume the proper role necessary to satisfy the needs of aggrieved employees." Flynn & Higgins, *supra* note 17, at 1099.

26. *United Steelworkers v. Warrior and Gulf Navigation Co.*, 363 U.S. 574, 581 (1960).

27. See, e.g., Atleson, *Disciplinary Discharges—Arbitration and NLRB Deference*, 20 BUF. L. REV. 355 (1971); Getman, *Collyer Insulated Wire—A Case of Misplaced Modesty*, 49 IND. L. J. 57 (1973); Gould, *Labor Arbitration of Grievances Involving Racial Discrimination*, 118 U. PA. L. REV. 40 (1969).

tem employed in the instant case)[28] as they affect the rights of individual employees.[29]

C. The extent of an International Union's vicarious liability for the misconduct of its tightly controlled locals has been frequently litigated to conflicting conclusions in the lower courts but never resolved by this Court.

Finally, this case presents an additional issue, much litigated but as yet unresolved by this Court, namely whether an international union is vicariously liable for the misconduct of its locals when its Constitution provides for such extensive control and direction of the locals by the international that the locals are not truly autonomous. Thus some courts which have analyzed the Constitution of the International Brotherhood of Teamsters have concluded that its locals are not automonous bodies, but rather "subdivision[s] of International subject to International's control." *I.B.T. v. United States*, 275 F.2d 610, 614 (4th Cir. 1960); *Great Coastal Express, Inc. v. I.B.T.*, 350 F. Supp. 1377 (E.D. Va. 1972). See also *Eazor Express, Inc. v. I.B.T.*, 357 F. Supp. 158 (W.D. Pa. 1973); *Pilot Freight Carriers, Inc. v. Local 391, I.B.T.*, 375 F. Supp. 1254 (M.D. N.C. 1974) (dicta). See *Mile Branch Coal Co. v. United*

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28. See Azoff, *Joint Committees as an Alternative Form of Arbitration Under the NLRA*, 47 TUL. L. REV. 325, 329, 336 (1973); Clark, *The Duty of Fair Representation: A Theoretical Structure*, 51 TEX. L. REV. 1119, 1169 (1973); Feller, *A General Theory of the Collective Bargaining Agreement*, 61 CALIF. L. REV. 663, 836-838 (1973).

29. Indeed, this Court's confidence in the integrity of contractual grievance procedures has been sufficiently shaken that it has refused to endow their results in racial discrimination cases with the same finality accorded other claims of contract violations. *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 58 n. 19 (1974).

Mine Workers, 266 F.2d 919 (D.C. Cir. 1959) for a similar holding with respect to the UMW.

In *I.B.T. v. United States*, the court held, after a thorough examination of the provisions of the International's Constitution, that the local was an agent of the International for the purposes of both service of process and vicarious liability for criminal contempt, on the ground that the Constitution

> ". . . showed such extensive control and direction of the local as to warrant the conclusion that the local is a component of the International. The local is the internal organizational means which the International employs to keep its accounts of its membership, to collect its revenues, and to execute and enforce its policies. If all of the other general and specific rights of control vested in International should prove insufficient to assure subservience of the local in a particular matter, the right to suspend the charter and seize immediate control of a local which adopts an independent course must be effective." *Id.* at 614.

Particularly apposite to the instant case is *Great Coastal Express* which reached the identical conclusion with respect to an I.B.T. Local not in trusteeship, based on the 1966 I.B.T. Constitution (the identical document which governs this case).[30]

Contrary decisions have been rendered by the Tenth and Seventh Circuits respectively in *Barefoot v. I.B.T.*, 424 F.2d 1001 (10th Cir. 1970) and *Morgan Driveaway v. I.B.T.*, 268 F.2d 871 (7th Cir. 1959). See also *Sagers v. Yellow Freight System, Inc.*, 58 F.R.D. 54 (N.D. Ga. 1972) (dicta).

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30. Exhibit N to deposition of Walter Shea, Assistant to the General President of the I.B.T.

However, the Sixth Circuit considered none of these conflicting authorities nor any of the competing policy interests involved in arriving at its decision exculpating the International, preferring to treat as dispositive the fact that one of the eight petitioners did not personally "know of any steps that [the I.B.T.] should or should not have taken." (A15).

Nor did the Sixth Circuit consider the abundant evidence in this case, in addition to the 1966 Constitution, of the I.B.T.'s reservation and exercise of direction and control of its locals, and in particular Local No. 377, in the form of the testimony of Walter Shea, Assistant to the General President of the I.B.T.,[31] correspondence between the International and Local 377 reflecting absolute International control of the Local's bylaws,[32] a telegram from International General Vice President Fitzsimmons "ordering" the allegedly autonomous Local 377 to quell the wildcat strike involved in the instant case,[33] and copies

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31. Shea testified that, among other things, the International participates in negotiating National Master Automobile Transporter Agreements (Dep. Tr. 6, 59, 67) allegedly entered into only by the locals (1967-70 Agreement, p. 1); "advises" local unions on the handling of grievances (Dep. Tr. 10); "coordinates" conference level grievance committees (Dep. Tr. 15); "assists" locals in complying with the International Constitution and their own bylaws (Dep. Tr. 16); audits the local's books (Dep. Tr. 16); "reviews" local bylaws which must be approved by the General President of the International (Dep. Tr. 17-18); conducts "policy indoctrinations" as to differences with local unions (Dep. Tr. 26); designates persons to oversee conference level grievance committees (Dep. Tr. 30); and intervenes in local wildcat strikes (Dep. Tr. 35).

32. Documents produced by I.B.T. pursuant to notice and agreement at Shea's deposition (Dep. Tr. 19) were made a part of the record in the District Court as exhibits to petitioners' brief in opposition to summary judgment. See in particular Exhibit 1k in which President Hoffa rejects a proposed amendment to the 377 bylaws which would have vested greater control in the membership at the expense of the executive board and might have averted the unfortunate occurrences in the instant case.

33. Exhibit 2.

of local charters issued by the International providing for the allegedly autonomous local to turn over to the International "all books, documents, property and funds" in the events of secession, disaffiliation, dissolution, suspension or charter revocation.[34] Moreover, there is evidence of International involvement in the very grievance proceedings involved in this case, as witness Local 377 Business Agent Abe Schwartz' testimony that (under extreme pressure from the unhappy plaintiffs) he met with General President Fitzsimmons and Anchor personnel director Daniel Sandy "to get another hearing" (R. 282-286).

In light of the extent of litigation and conflicting resolutions of this issue in the lower courts and of the Sixth Circuit's failure to consider either the evidence or the competing policy interests involved, this Court should exercise its certiorari jurisdiction to consider whether the International Brotherhood of Teamsters may immunize itself from liability for the torts of its locals by proclaiming their autonomy, while at the same time retaining absolute control over their conduct, their property and their very existence.

IV. This Case Presents a Good Vehicle for This Court to Consider and Decide the Issues Presented Herein.

The facts of this case present the competing policy interests involved in their clearest and most compelling light and therefore provide this Court with an optimal

34. Exhibits 3a-b are copies of charters issued to Local 964 in 1971 and 1952 respectively, produced by I.B.T. pursuant to notice and agreement at Shea's deposition (Dep. Tr. 51). Contrary to said notice and agreement, no legible copy of 377's charter was produced; however, the pertinent language is part of the form for all local charters.

opportunity to consider and decide the substantial and unresolved legal issues involved. There is overwhelming evidence that petitioners were innocent of the dishonesty for which they were discharged.[35] The evidence establishes that the Union's conduct in handling petitioners' grievance was at best arbitrary and irrational,[36] and in

35. The motel clerk admitted that petitioners had actually paid the amounts shown on the receipts submitted to their employer for reimbursement, that he had recorded less on the motel books and pocketed the difference, and that he had perjured himself in the affidavit used to support petitioners' discharge (R. 137-142). Moreover, the motel owner admitted that he had handled none of the transactions and that his affidavit was based wholly on the records prepared by the clerk (R. 184-188).

36. Union officials affirmatively misled petitioners into desisting from gathering their own exculpatory evidence, by advising them that there was no need for petitioners to investigate or do anything (R. 106, 206), that they should forget it (R. 127), do nothing (R. 127), and let Business Agent Angelo take care of it (R. 118, 219). This advice was coupled with assurances of certain success in retaining their jobs (R. 118, 219-220). The evidence discloses no conceivable rational basis for either the advice or the assurances. Indeed, the respondents have never even hypothesized a conceivable rational basis for this conduct by the union.

If the union had advised petitioners that the company's evidence against them was so compelling as to render petitioners' grievance futile, absent substantial countervailing evidence of innocence, and that union resources could not be devoted to processing futile grievances, there would have been a rational basis for such a position. Moreover, it would have apprised petitioners that it was their burden to investigate and to gather evidence of innocence in order to persuade the union to process the grievance. However, the union did not adopt this rational stance.

If the union had advised petitioners that while it would process their grievance, it lacked the resources to investigate or gather evidence of innocence and that petitioners must assume the burden of doing so, there would have been a rational basis for such a position and it would have afforded petitioners the opportunity to gather exculpatory evidence.

If the union had merely failed to investigate and to advise petitioners of the necessity or desirability of their doing so in their own behalf, these omissions may have constituted negligent but not necessarily irrational conduct. However, the union did not even assume this nonfeasant posture.

all probability was in "bad faith"[37] out of hostile motives toward petitioners and "friendly" motives toward the company (while the evidence concededly and inevitably falls short of that degree of proof of fraud necessary to overturn a grievance decision apart from fair representation principles).

Finally, the breach of fair representation suffered by petitioners clearly prejudiced the outcome of the grievance proceeding and the reliability of its fact-finding by depriving both the petitioners and the tribunal of the benefit of the unequivocally exculpatory evidence of the motel clerk and owner, which petitioners have demonstrated to be available.

These facts present labor law issues of nationwide concern in their clearest light for consideration by this Court.

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37. While there is no conceivable benevolent explanation for the union's apparently irrational conduct toward petitioners, there is one conceivable rational explanation for the conduct, to-wit: hostile motives toward petitioners. There is substantial evidence of a history of hostility between petitioners and union officials and of a sweetheart relationship between those officials and the company. See Statement of the Case, *supra* at pp. 9-10).

CONCLUSION

The central issue in this case is whether the eight petitioners, whose livelihoods have been jeopardized and whose good names have been ruined by demonstrably false charges of dishonesty, are to be permanently deprived of their jobs and their honor because they were given the form without the substance of a grievance hearing. If the answer (which ought not depend on whether petitioners worked in the Sixth Circuit rather than the Second or Ninth) is to be "yes", it should be so only after a reasoned consideration and explanation by this Court of the competing national labor law policy interests which compel such a result.

Accordingly, petitioners pray that this Court grant their petition for a writ of certiorari.

Respectfully submitted,

GOLD, ROTATORI, MESSERMAN & HANNA
By: NIKI Z. SCHWARTZ
1100 Investment Plaza
Cleveland, Ohio 44114
Telephone: 696-6122
Counsel for Petitioners

APPENDIX

OPINION OF THE DISTRICT COURT

(Filed September 25, 1973)

Civil Action C 69-510 Y

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BUTRICE A. HINES, *et al.*,
Plaintiffs,

v.

LOCAL UNION NO. 377, CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN & HELPERS;

INTERNATIONAL BROTHERHOOD OF TEAMSTERS; CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA;

ANCHOR MOTOR FREIGHT, INC.,
Defendants.

ORDER

Each of the defendants in the above captioned cause of action have submitted to this court renewed motions for summary judgment. On October 31, 1972, this court issued an order which stated in its entirety:

> "Upon consideration, this court finds substantial issues as to material facts. Therefore, defendants' motion for summary judgment must be denied.
>
> IT IS SO ORDERED."

Upon the refiling of the motions for summary judgment by defendants Anchor Motor Freight and Local Union No. 377, and the motion for summary judgment filed by the International Teamsters, this court has reviewed the voluminous file and briefs of parties and has come to the conclusion that the factual issues referred to by the court in its order of October 31, 1972 are not relevant to the summary judgment motions and that said motions must now be granted.

The pertinent facts of the instant case are as follows:

Plaintiffs were discharged from their employment with Anchor Motor Freight on the 27th of July, 1967, for alleged dishonesty; said dishonesty consisting of the falsifying of motel receipts. The discharges of all of the plaintiffs were processed through the grievance procedure as provided for by a contract between the local Union and the company, known as the National Master Automobile Transporters Agreement and Central Conference Area Supplemental Agreement covering truckaway, driveaway and local agreements. Plaintiffs asserted their innocence to the charges. The tangible evidence that was used against plaintiffs in the grievance procedure consisted of receipts showing that amounts paid were in excess of amounts shown paid on the comparable motel registration cards; company logs and expense summaries; a notarized statement of motel clerk, Anthony Pagano, swearing to the accuracy of the amounts shown on the registration cards; and the notarized statements of motel owner, Joseph Repicci, swearing to the accuracy of the accounts shown on the registration cards and to the fact that inflated receipts were given to plaintiffs.

Plaintiffs carried their grievance to the Union, and the Union representative, one Mr. John Angelo. They assert that they told Mr. Angelo that the motel operator

was at fault and that Mr. Angelo's response was that "there was nothing to worry about". In July of 1967, there was a meeting of the Central Conference Joint Arbitration Committee, at which time all plaintiffs were given an opportunity to present their evidence and make their arguments as to their side of the case. At that meeting local union representatives spoke on behalf of the drivers. However, the final decision of the Committee was that the discharge of the drivers was upheld.

Plaintiffs then retained an attorney who went to the motel in New York, obtained a statement from the owner of the motel, Mr. Repicci, indicating that he had no personal knowledge of the transactions in question, that the clerk had handled such transactions, and that the discrepancies between the receipts and registration cards could possibly be attributable to the clerk recording less than was actually paid. With this new information plaintiffs returned to Detroit in October of 1967, seeking a rehearing based on new evidence. However, said requests were unanimously denied on the ground that there was no new evidence justifying the reopening, and that the motel owner's statement was never considered on the merits of the discharge.

The plaintiffs now assert in the instant action, that defendant company wrongfully discharged each and every plaintiff, and that Local 377 processed plaintiffs' grievance in an arbitrary and perfunctory fashion and acted in bad faith. In response to defendants' motions for summary judgment, plaintiffs assert that it is improper for this court to grant such motions when there is an issue of intent in question, specifically, the bad faith of the Union. This court cannot agree. The logical implications of such an argument would entitle any aggrieved employee to appeal a decision by an arbitrator by merely asserting that there was bad faith on the part of the Union's repre-

sentation. Such an issue would always be denied, and thus there would always be an issue of bad faith before the court.

This court is of the opinion that the plaintiffs' actions are first barred by the doctrine of finality in arbitration awards; and secondly, is barred for failure to show facts comprising bad faith, arbitrariness or perfunctoriness on the part of the Unions. The Supreme Court has spoken out definitively in the labor area in relation to arbitration of grievances in what has become known as the *Steelworkers Trilogy*. *Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960); *Steelworkers v. Warrior & Gulf Co.*, 363 U.S. 574 (1960); and *Steelworkers v. Enterprise Corp.*, 363 U.S. 593 (1960). In these cases the Supreme Court established the principle of finality of arbitration. Therein, the Supreme Court stated that: "Arbitration is the substitute for industrial strife", and that it is "part and parcel of the collective bargaining process" and that the labor agreement "calls into being a new common law—the common law of a particular industry . . ." The District Court for the Southern District of Ohio, quoting from the case of *Morris v. Werner Continental Inc., et al.*, 466 F.2d 1185 (1972) stated:

> "This group of cases teaches us another thing as well, i.e. that so long as there is an absence of fraud or bad faith or demonstrated bias or collusion, the decision of the arbitrators or here, the Joint Committee, is final and binding and courts are generally powerless to interfere . . ."

This court is of the opinion that the material facts as presented by both parties, which are basically uncontroverted except as to their import, illustrate that plaintiffs were fired; that they carried through the grievance procedure; that the Union did represent them; the Joint Committee in Detroit upheld the company's position; and further, on a rehearing for new evidence, again affirmed the discharge of the employees. Thus, all of the available steps of the grievance procedure have been followed and a decision rendered. This court, in following the dictates of the Trilogy as laid down by the Supreme Court, can come to no other conclusion but that the summary judgment motions by defendants must be granted and the finality of the arbitration process affirmed.

The second argument made by plaintiffs is that under the doctrine as announced by the Supreme Court in *Vaca v. Sipes*, they are entitled to come into this court to illustrate the bad faith representation by the Union, and carry their suit forward. This argument too must fail. After careful consideration of the voluminous file involved in this case, including the depositions of Repicci and Pagano, as well as most of the plaintiffs, the court finds that plaintiffs have failed to reveal even a threshold issue of bad faith. The asserted bad faith instances as purported by plaintiffs in its brief in opposition to the motion for summary judgment include the following:

1. That some of plaintiffs were Norwood drivers who had originallly been laid off and who were rehired at the new Lordstown Plant;
2. That several of plaintiffs were unhappy with a local rider and the lack of opportunity to vote on its ratification that was negotiated by Anchor Motor Freight and Teamster Local 964;
3. That drivers, in general, complained about the failure of representation from Local 377 when it took over, including a failure to provide a steward and a committeeman from the opening of the terminal in 1966;

4. That during the course of a meeting, involving this rider and the selection of committeemen, which was hotly contested, Angelo denounced the Norwood drivers as hillbillies and declared that they weren't going to take over his Union;

5. That there was a wild-cat strike in February of 1967 as a result of the working conditions and discontent over the local rider;

6. That plaintiffs, or some of them, were instrumental in this strike;

7. That during the period in question, Lordstown Terminal Manager, Eugene Babiasz, loaned a company car to John Angelo and arranged a personal automobile purchase for him in Michigan;

8. That the company gave jobs to two relatives of Abe Schwartz;

9. That the company had tried to fire plaintiff Worley before;

10. That 25 of the 57 Norwood drivers hired by Lordstown had either terminated or quit by the end of 1967;

11. That defendant Union presented not a single piece of paper in response to the charges against the plaintiffs at the grievance hearings.

From these inferences, the court is asked to further infer that therefore defendant Union acted in bad faith in processing plaintiffs' grievances.

The court is of the opinion that basing an inference upon an inference would be improper, and that the above stated facts, even if taken as true, would not support a prima facie case of bad faith against the Union. In

Vaca v. Sipes, 386 U.S. 171 (1967), the Supreme Court mandates that an employee be precluded from litigating his grievance if the Union did not breach its duty of fair representation. Under the language of *Vaca v. Sipes*, a Union does not breach its duty of fair representation unless the Union official is personally hostile to the employee or the Union official processes the grievance in bad faith. Hostility and bad faith are not demonstrated by refusal to take a grievance to arbitration. Further, there is a distinction made between Union incompetence in handling a grievance and actual hostility, malice or bad faith on the part of the Union officials in handling a grievance. See *Dill v. Greyhound Corp.*, 435 F.2d 231 (6th Cir. 1970); see also *Lewis v. Magna American Corp.*, 472 F.2d 560 (6th Cir. 1972). In the case of *Whitmore v. Greyhound Lines, Inc.*, 27,620 Labor Relations Cases, par. 13,821, the court therein states:

> "Unlike Lewis, the present Union continued to process plaintiff's grievance to the final step of arbitration, even after plaintiff made a written confession of the theft. Furthermore, the defendant Union, as plaintiff concedes, attempted to have the plaintiff reinstated with defendant Greyhound, even after this adverse arbitration award. This is hardly the personal hostility envisioned by Vaca, Dill and Lewis."

In the instant case, the defendant Union attempted to have the employees reinstated and, in fact, were successful in having the employees retained in their employment until the grievance procedure had been carried forward, contrary to the employer's decision to have each and every one of the plaintiffs immediately discharged. While the acts of the defendant Union may not meet professional standards of competency, and while it might have been advisable for the Union to further investigate

the charges against plaintiffs, the mere fact that the Union exercised bad judgment does not in and of itself constitute bad faith or personal hostility. See *Whitmore v. Greyhound Lines, Inc.*, supra. Plaintiffs further argue as stated above, that cases involved in intent and bad faith are not proper for summary judgment motions. However, defendant Unions list numerous cases which this court has reviewed and in which summary judgment has been granted to the defendants. See *Balowski v. General Motors*, 372 F.2d 829 (6th Cir.); *Lewis v. Magna American Corp.*, 472 F.2d 560 (6th Cir.); *Broniman v. The A & P*, 353 F.2d 559 (6th Cir.); *Walden v. International Brotherhood of Teamsters, Local 71*, 468 F.2d 196 (4th Cir.); *Price v. International Brotherhood of Teamsters*, 457 F.2d 605 (3rd Cir.).

This court, therefore, finds no genuine issues as to any material facts and hereby sustains all defendants' motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

/s/ LEROY J. CONTIE, JR.
U. S. District Judge

OPINION OF THE COURT OF APPEALS

(Filed November 22, 1974)

No. 73-2105

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BUTRICE A. HINES, *et al.*,
Plaintiffs-Appellants,

v.

LOCAL UNION NO. 377, *et al.*,
Defendants-Appellees.

ON APPEAL from the United States District Court for the Northern District of Ohio, Eastern Division.

Before: PHILLIPS, Chief Judge, EDWARDS and McCREE, Circuit Judges.

McCREE, J. delivered the opinion of the Court, in which PHILLIPS, C. J., joined. EDWARDS, J. (p. 8) filed a separate opinion concurring in part and dissenting in part.

McCREE, Circuit Judge. This is an appeal from the grant of a motion for summary judgment in favor of defendants in an action by eight truck drivers for damages caused by their wrongful discharge by their employer and by the breach of the duty of fair representation on the part of their union. The primary question we consider is whether summary judgment in favor of defendant local union was proper in the light of plaintiffs' allegation, as-

sumed to be true, that because of political animosity, local union officials processed their grievance in a perfunctory manner. We decide that summary judgment should not have been entered for the local union and that plaintiffs should have been permitted to submit proofs in support of the allegations of bad faith and perfunctory treatment.

The case was filed by discharged employees on June 30, 1969, approximately two years after their discharge had been upheld by the arbitration committee designated in the contract to hear employees' grievances. On October 31, 1972, the district judge denied defendant Anchor Motor Freight's motion for summary judgment, finding "substantial issues as to material facts." On May 31, 1973, Anchor filed another motion for summary judgment in which the unions joined. After reviewing the depositions and briefs submitted by the parties, the district court entered summary judgment in favor of all defendants. This appeal followed.

The facts considered relevant by the district court are as follows:

> Plaintiffs were discharged from their employment with Anchor Motor Freight on the 27th day of July, 1967, for alleged dishonesty; said dishonesty consisting of the falsifying of motel receipts. The discharges of all of the plaintiffs were processed through the grievance procedure as provided for by a contract between the local union and the company, known as the National Master Automobile Transporters Agreement and Central Conference Area Supplemental Agreement covering truckaway, driveaway and local agreements. Plaintiffs asserted their innocence to the charges. The tangible evidence that was used against plaintiffs in the grievance procedure consisted or [sic] receipts showing that amounts paid were in excess

> of amounts shown paid on the comparable motel registration cards; company logs and expense summaries; a notarized statement of motel clerk, Anthony Pagano, swearing to the accuracy of the amounts shown on the registration cards; and the notarized statements of motel owner, Joseph Repicci, swearing to the accuracy of the accounts shown on the registration cards and to the fact that inflated receipts were given to plaintiffs.
>
> Plaintiffs carried their grievance to the Union, and the Union representative, one Mr. John Angelo. They assert that they told Mr. Angelo that the motel operator was at fault and that Mr. Angelo's response was that "there was nothing to worry about." In July of 1967, there was a meeting of the Central Conference Joint Arbitration Committee, at which time all plaintiffs were given an opportunity to present their evidence and make their arguments as to their side of the case. At that meeting local union representatives spoke on behalf of the drivers. However, the final decision of the Committee was that the discharge of the drivers was upheld.
>
> Plaintiffs then retained an attorney who went to the motel in New York, obtained a statement from the owner of the motel, Mr. Repicci, indicating that he had no personal knowledge of the transactions in question, that the clerk had handled such transactions, and that the discrepancies between the receipts and registration cards could possibly be attributable to the clerk recording less than was actually paid. With this new information plaintiffs returned to Detroit in October of 1967, seeking a rehearing based on new evidence. However, said requests were unanimously denied on the ground that there was no new evidence

justifying the reopening, and that the motel owner's statement was never considered on the merits of the discharge.

Under Rule 56(c) of the Federal Rules of Civil Procedure, the burden is on the party seeking summary judgment to establish that there is no genuine issue as to any material fact. In addition, the inferences to be drawn from the affidavits, exhibits and depositions filed in connection with the motion must be viewed in the light most favorable to the party opposing the motion. *United States v. Diebold,* 369 U.S. 654 (1962).

Accordingly, we consider, as did the district court, the matters before it from which bad faith or arbitrary conduct of the local union could be inferred. They consist of the motel clerk's admission, made a year after the discharge was upheld in arbitration, that he, not plaintiffs, pocketed the money; the claim of the union's failure to investigate the motel clerk's original story implicating plaintiffs despite their requests; the account of the union officials' assurances to plaintiffs that "they had nothing to worry about" and "that there was no need for them to investigate;" the contention that no exculpatory evidence was presented at the hearing; and the assertion that there existed political antagonism between local union officials and plaintiffs because of a wildcat strike led by some of the plaintiffs and a dispute over the appointment of a steward, resulting in denunciation of plaintiffs as "hillbillies" by Angelo, the union president.

After considering all material submitted with the motion for summary judgment, the district court held that under *Vaca v. Sipes,* 386 U.S. 171 (1967), no breach of the duty of fair representation was shown.

A union breaches its duty of fair representation when it acts arbitrarily, discriminatorily or in bad faith. *Vaca*

v. Sipes, 386 U.S. at 190; *Humphrey v. Moore,* 375 U.S. 335, 350 (1964); *Ford Motor Co. v. Huffman,* 345 U.S. 330, 338 (1953); *Johnson v. General Drivers, Warehousemen & Helpers, Local 89,* 488 F.2d 250, 251 (6th Cir. 1973); *Dill v. Greyhound Corp.,* 435 F.2d 231, 238 (6th Cir.), *cert. denied,* 402 U.S. 986 (1970). For example, it "may not arbitrarily ignore a meritorious grievance or process it in a perfunctory manner." 386 U.S. at 191. In *Vaca,* the plaintiff was dismissed from his job because of poor health. He contested the dismissal and the union initiated a grievance. However, upon receipt of an unfavorable medical report it dropped the grievance at the fourth step just prior to arbitration, and urged the employee to accept a company offer to refer him to a rehabilitation center. The employee refused the offer and filed suit against the union. The Supreme Court determined that the union did not breach its duty of fair representation because it attempted to obtain medical evidence in support of the employee's case, and tried to secure less vigorous work or rehabilitative treatment for him. There was no evidence of personal hostility by any union official toward the grievant.

Although this appeal does not concern a union decision to short circuit the processing of a grievance, the facts assumed as true by the district court were that the union made no attempt to obtain evidence favorable to the employees, and that some of its officials were hostile towards them.

Appellants contend that had the local union investigated the motel clerk, Pagano, as requested, it would have discovered that he had pocketed the money, and that appellants were innocent of any wrongdoing. The failure to investigate, by itself, is insufficient to fix liability on the union since "proof that the union may have acted negli-

gently or exercised poor judgment is not enough to support a claim of unfair representation." *Dill v. Greyhound Corp.*, 435 F.2d at 238, *quoting Bazarte v. United Transp. Union*, 429 F.2d 868, 872 (3d Cir. 1970). In *Dill*, we reversed the trial court's finding of a breach of the duty of fair representation because, although the union failed to proceed to arbitration, there was no proof that its decision was the result of hostility or malice, nor was there any evidence that it acted in bad faith in settling the grievance. 435 F.2d at 238.

In this appeal, there are allegations of bad faith and the assertion of a reason for it, and the district court's ruling that "plaintiffs have failed to reveal even a threshold issue of bad faith" should not have been made without affording them the opportunity to prove this contention.

Appellants have met the requirement that supporting affidavits

> alleging the breach of a Union's duty of fair representation must contain more than "conclusory statements alleging discrimination. In particular plaintiffs must make a showing that the action or inaction of the statutory representative complained of was motivated by bad faith, for the gravamen of the rule is 'hostile discrimination.'" Gainey v. Brotherhood of Railway Employees, 313 F.2d 318, 323 (C.A. 3). "[C]onclusory words * * * without a concomitant showing of lack of good faith [does] not set forth a claim."

Balowski v. International Union, United A., A. & A. Imp. Workers, 372 F.2d 829, 835 (6th Cir. 1967), *quoting Hardcastle v. Western Greyhound Lines*, 303 F.2d 182, 186 (C.A. 9) *cert. denied*, 371 U.S. 920 (1962).

A case where questions of good faith or fraud are at issue should not be summarily decided without the

taking of testimony unless it is clear that recovery cannot be had on any state of the evidence. *Williamson v. Wilbur-Rogers, Inc.*, 381 F.2d 710, 721 (6th Cir. 1967), *S. J. Groves & Sons Co. v. Ohio Turnpike*, 315 F.2d 235, 238-39 (6th Cir. 1963).

In *St. Clair v. Local Union No. 515*, 422 F.2d 128 (6th Cir. 1969), we upheld a jury verdict for an employee against his union in a fair representation case where the local contended that a directed verdict should have been granted. Although "the evidence of bad faith [was] minimal, there [was] enough to present a jury question" (422 F.2d at 131) that the union should have protested more vigorously, that it should have urged its members to walk off the job in protest, or that a union official declined to act because of hostility towards the employees. Accordingly, we determine that the district court erred in granting summary judgment in favor of the local union.

Although we hold that defendant local union's motion for summary judgment was improperly granted, we determine that the district court did not err in granting the motions made by the International Union and by the employer.

There was no claim that the local union was acting for or at the direction of the International, and appellant Hines, when asked on deposition what steps the International failed to take in investigating the company's charge replied: "I don't know of any steps that they should or should not have taken." Since there was no genuine issue as to a material fact about the conduct of the International Union, the grant of summary judgment was proper.

Appellant contends that the employer did not have "just cause" to discharge them because of the recantation

of the motel clerk. As we said in *Balowski v. International Union, supra,* at 833,

> [i]t is apparent that what plaintiff is attempting to do is to relitigate his grievance in this proceeding. This he cannot do when the collective bargaining agreement provides for final and binding arbitration of all disputes, absent a showing of fraud, misrepresentation, bad faith, dishonesty of purpose, or such gross mistake or inaction as to imply bad faith on the part of the Union or the employer. Cf. Smith v. Evening News Association, 371 U.S. 195, 83 S.Ct. 267, 9 L.Ed.2d 246.

No evidence of any misconduct on the part of the employer to avoid the arbitration award is suggested. Although appellants argue that there was a conspiracy between the union and the company, none of the evidence[1] offered to substantiate this claim is sufficient under the requirement of *Bawloski, supra,* that something more than suspicion be shown. Accordingly, we hold that the district court correctly granted summary judgment in favor of Anchor Motor Freight. *See United Steelworkers of America v. American Manufacturing Co.,* 363 U.S. 564 (1959), *United Steelworkers of America v. Warrior & Gulf Navigation Co.,* 363 U.S. 574 (1959), *United Steelworkers of America v. Enterprise Wheel & Car Corp.,* 363 U.S. 593 (1959).

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1. The "facts" plaintiffs rely upon to show that both the union and company were working together to discharge the drivers are as follows:

(1) That a company manager loaned a company car to Angelo, the local President, and arranged a personal automobile purchase for him in Michigan.

(2) That the company gave jobs to two relatives of Schwartz, another union official.

(3) That the company had tried to fire one of the appellants before.

(4) That 25 of the 57 Norwood drivers hired by Lordstown, had either been terminated or quit by the end of 1967.

Summary judgment in favor of Anchor Motor Freight and the International Union is affirmed.

Reversed and remanded to vacate the judgment in favor of the local union and for further proceedings consistent with this opinion.

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EDWARDS, Circuit Judge, concurring in part and dissenting in part. I agree with the majority opinion in affirming the judgment of the District Court in dismissal of the case as to the International Union. I also agree with the majority opinion in reversing for hearing as to plaintiffs' allegations concerning the Local Union.

I think, however, that similar issues of fact were presented by the pleadings concerning plaintiffs' charges against the employer which should not have been dealt with on summary judgment, and as a consequence, as to the employer the case should likewise be reversed and remanded for hearing.

JUDGMENT OF THE COURT OF APPEALS

(Filed November 22, 1974)

No. 73-2105

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BUTRICE A. HINES, *et al.*,
Plaintiffs-Appellants,

v.

LOCAL UNION NO. 377, *et al.*,
Defendants-Appellees.

ON APPEAL from the United States District Court for the Northern District of Ohio, Eastern Division.

This cause came on to be heard on the record from the United States District Court for the Northern District of Ohio and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court that the Summary Judgment in favor of Anchor Motor Freight and the International Union is affirmed. Judgment of the District Court in favor of the local union is reversed and the case is remanded for further proceedings. It is further ordered that Hines, et al. should recover their costs against Local Union No. 377, the International Union and Anchor Motor Freight should recover their costs from Hines as itemized below and that the execution therefore issue out of said District Court.

Entered by Order of the Court

JOHN P. HEHMAN
Clerk